Michael Ver Hagen d/b/a Data Design

       Plaintiff,

  v.   Case No. 2:22-cv-1245

BeneTek, Inc.

       Defendant.

COMPLAINT

Plaintiff Michael Ver Hagen d/b/a Data Design ("Data Design"), for his complaint against defendant BeneTek, Inc. ("BeneTek") alleges as follows:

Parties

1.   Plaintiff Michael Ver Hagen is an individual residing in Albuquerque, New Mexico.

2.   Defendant BeneTek, Inc. is a Wisconsin corporation with a principal place of business at 250 N. Patrick Blvd., Suite 100, Brookfield, Wisconsin, 53045.

Nature of Action

3.   This is an action for breach of contract. More specifically, BeneTek has breached the software license agreement (the "Agreement"), attached as Exhibit A, by failing to pay royalties owed.

4.   This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). There is diversity of citizenship among the parties, and the amount in controversy exceeds $75,000.

5.   Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1) as BeneTek resides in this District.

BACKGROUND

6.   In March 2016, the parties entered into the Agreement "for the creation, delivery, and support of the software that Data Design will provide to BeneTek…" *See* Agreement, ¶ 2.

7.   Pursuant to the terms of the Agreement, Data Design created the software, referred to in the Agreement as "ACA-Help," and provided the ACA-Help software to BeneTek.

8.   Generally speaking, the ACA-Help software assists employers with reporting compliance with the employer mandate of the Affordable Care Act.

9.   BeneTek paid a total of $33,000 to Data Design pursuant to paragraphs 10.1 and 10.2 of the Agreement. More specifically, BeneTek paid $18,000 on March 8, 2016 pursuant to paragraph 10.1, $7,500 on May 10, 2016 pursuant to paragraph 10.2, and $7,500 on August 11, 2016 pursuant to paragraph 10.2.

10.   The payment on August 11, 2016 signified the end of the development cycle for the ACA-Help software.

11.   After the initial development, BeneTek requested changes to the software that required significant time and resources on the part of Data Design.

12.   Data Design and BeneTek reached two oral agreements relating to this further development of the ACA-Help software. The parties entered into oral agreements because the original written Agreement did not address compensation for further developmental work at the request of BeneTek that was deemed to be "non-essential but desirable" as set forth in paragraph 8.1 of the Agreement.

13.   Pursuant to the first oral agreement, Data Design performed the additional development and BeneTek paid a total of $25,000 for this work. More specifically, BeneTek paid $10,000 on April 4, 2017, $10,000 on April 25, 2017, and $5,000 on June 13, 2017.

14.   The parties entered into a second oral agreement in July 2017 relating to further development of the ACA-Help software. Pursuant to this second oral agreement, the parties agreed that BeneTek would pay $24,000, to be paid out as a $6,000 payment in August and $2,000 in September, then $4,000 per month through the fourth quarter of 2017.

15.   Data Design performed the development work pursuant to the second oral agreement.

16.   BeneTek paid $6,000 on August, 20, 2017. However, BeneTek failed to pay the remaining $18,000.

17.   The Agreement further requires payment of ongoing royalties by BeneTek for use of the ACA-Help software. These royalty payments are set forth in paragraph 10.3 of the Agreement. Generally speaking, the royalty payment is calculated based upon the number of employee records that are in the system at any time during each calendar month.

18.   BeneTek has failed to make any royalty payments pursuant to paragraph 10.3 of the Agreement.

19.   Upon information and belief, the royalties owed under paragraph 10.3 exceed $80,000.

20.   On several occasions Data Design has attempted to resolve this dispute by requesting payment of the payments and royalties owed. BeneTek has refused these overtures.

COUNT I – BREACH OF CONTRACT

21.   Plaintiff incorporates paragraphs 1-20 as if fully stated herein.

22.   Plaintiff has performed all of his obligations under the Agreement.

23.   BeneTek has breached the Agreement by refusing to pay royalties owed under the Agreement.

24.   BeneTek has breached the Agreement by failing to provide information to compute royalties owed as required by paragraphs 6.13 and 6.14.

25.   BeneTek has also breached the second oral agreement by refusing to pay the agreed-upon $18,000 in additional development work for the ACA-Help software.

26.   Plaintiff has been harmed by BeneTek's refusal to pay the funds owed as he has not received the funds that are owed to him. Further, Plaintiff has been harmed by incurring the expense of this action to collect funds that are owed to him.

WHEREFORE, Plaintiff Michael Ver Hagen d/b/a Data Design demands that judgment be entered in his favor and against Defendant BeneTek, Inc. as follows:

A.   Adjudging that Defendant has breached the Agreement;

B.   Adjudging that Defendant has breached the oral agreement between Plaintiff and Defendant;

C.   Awarding Plaintiff his damages arising from Defendant's breach of contract, together with prejudgment interest;

D.   Awarding Plaintiff his attorneys fees and costs; and

E.   Granting such other and further relief as the Court may deem appropriate.

Jury Demand

Plaintiff Michael Ver Hagen d/b/a Data Design hereby demands a jury trial of all issues of fact not admitted by the Defendant.

Dated: October 21, 2022

s/Michael T. Griggs
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